

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

1. Income Tax Appeal no. 39/2006
The Commissioner of Income Tax -IV .vs.. M/s Shriram Bulcons Ltd.
2. Income Tax Appeal no.53/2006
The Commissioner of Income Tax -IV vs. M/s Shriram Bulcons Ltd.
3. Income Tax Appeal No. 60/2006
The Commissioner of Income Tax-IV vs. M/s Shriram Bulcons Ltd.
4. Income Tax Appeal No.65/2006
The Commissioner of Income Tax-IV vs. M/s Shriram Bulcons Ltd.

Notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's
Orders.

CORAM : A.P. Lavande & R.V.More,JJ
Date of Reserving : 28.9.2007
Date of pronouncement: 10.10.2007

Heard Mr. Anand Parchure, learned counsel for the appellants and Shri C.J.Thakar, learned counsel for the respondents.

2. All these four appeals under Section 260-A of the Income Tax Act, 1961 have been preferred by the revenue against the common order dated 24.8.2005 passed by the Income Tax Appellate Tribunal, Nagpur Bench, Nagpur (ITAT for short) disposing of Income Tax Appeal Nos. 200/Nag/2002, 107/Nag/2003, 108/Nag/2003 and 201/Nag/2002.

3. The respondent in above appeals is the successor of M/s Shriram Builders (hereinafter referred to as 'Assessee') who was the civil contractor and builder. On 4.8.1996 the assessee entered into a development agreement with Bharat Kheta and others for development of business complex on their land situated on Kingsway Civil Lines, Nagpur. As per the said agreement, the assessee was given development rights to construct multi-storeyed commercial complex at their cost as per the sanctioned plan. The consideration agreed to be paid by the assessee to Khetas was Rs. 3.81 crores for which post dated cheques were given. There were 21 tenants in the said premises. It was the responsibility of the assessee to get them vacated at their cost. The project was to be completed within four years. Mr. Kheta and others agreed to transfer directly the proportionate share in land to respective purchasers of shop and offices etc. as may be nominated by the assessee. With a view to complete the project in time the assessee negotiated with the tenants and got them vacated by paying compensation. During the assessment year 1997-98 settlement was arrived at with some tenants for which compensation of Rs. 38 lacs was paid while in assessment year 1998-99 compensation of Rs.

79,84,987/- was paid. The assessee claimed deduction of the said amount in its profit and loss account for the assessment years 1997-98 and 1998-99 respectively. The deduction so claimed was allowed by the A.O. in scrutiny assessment under Section 143(3) for the said two years. Similar expenses paid in earlier years were also allowed by the department. The amounts paid to the tenants were allowed in respective years as revenue expenditure and such expenditure was never treated as one relating to stock-in-trade or work in progress.

4. It appears that there was some audit objection in respect of the above amounts. On account of the said objection notice under Section 154 was issued to revise intimation under section 143(1)(a). The assessee objected to the said notice. Consequently, A.O. dropped the proceedings and completed the scrutiny assessment by order dated 29.3.2000 allowing the expenditure as claimed.

5. Thereafter C.I.T. on the basis of the said objection issued notice under section 263 for assessment years 1997-98 and 1998-99 proposing to revise the orders passed under Section 143 (3). The assessee objected and claimed that he did not derive any title in the property of Khetas at any point of time

and hence the expenditure incurred on vacating tenants could not be taken as expenditure for improving the title of the assessee. The assessee also claimed that the expenditure incurred did not create any stock in trade or work in progress belonging to the assessee. The assessee also contended that consistently and regularly he was following the same method for claiming expenses on vacation of tenants and the same was accepted by the department in the past and as such department could not change the method of computation. The Commissioner of Income Tax held against the assessee and directed A.O. to revise the orders as per the directions given in his order passed under section 263. These orders were challenged by the assessee by filing appeals before the ITAT.

6. The assessee filed appeals before the CIT challenging the additions on various grounds. After considering the various submissions the CIT allowed the appeals of the assessee and deleted the expenditure incurred on said vacation. Against the orders passed by CIT for assessment years 1997-98 and 1998-99 the revenue filed two appeals before the ITAT. The ITAT disposed of the appeals by common order which has been impugned by the revenue by filing appeals. By the impugned order the ITAT has allowed the appeals filed

by the assessee and dismissed the appeals filed revenue. The Tribunal in the impugned order has held as follows:

I) The assessee was regularly following the mercantile method of accounting and was maintaining consolidated account and not project-wise account;

II) The revenue itself has accepted the position that the accounts were not maintained project-wise even for the accounting year 1994-95; and

III) The expenditure of vacating the tenants as and when incurred was claimed as the revenue expenditure and accepted by the department during the earlier assessment years.

IV) CIT has not pointed out as to what was wrong in the method of accounting followed by the assessee. It would not be equitable to permit the revenue to take different stand than what was taken by it in the earlier years. The view taken by the CIT that the expenditure in question has to be added to the cost of project and same has to be set off in the income of the project in the year of sale was neither tenable nor practicable.

V) The expenditure incurred in getting the tenants vacated did not in any way improve the title of the assessee because the assessee has no title of any nature over the property of Kheta. There was neither any improvement of title of assessee nor any stock-in-trade or work in progress belonging to the assessee. CIT had wrongly invoked the jurisdiction under section 263 of the Act.

7. Having heard the learned counsel for the parties and having considered the rival submissions we are of the considered opinion that no case has been made out by the revenue for interference by this Court. The findings recorded by the ITAT which have been mentioned above for holding that CIT had wrongly invoked the jurisdiction under Section 263 of the Act cannot be said to be perverse. In our opinion, the view taken by the ITAT for setting aside the orders passed by the CIT under section 263 of the Act cannot be faulted. In our opinion, no substantial question of law is involved in the above appeals. Hence, the appeals are rejected.

Judge

Judge

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